

Seattle Police Department  
**Office of Professional Accountability**  
**Annual Report**  
Fall 2003



**Report to:**

Mayor Greg Nickels  
Seattle City Council  
Citizens of Seattle

**Report Prepared by:**

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Office of Professional Accountability

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## A NOTE FROM THE DIRECTOR

Seattle's Office of Professional Accountability is unique. No other major police agency has brought in a civilian to administer its internal investigation function from within. In fact, Seattle took the experiment one step further by having the OPA Director serve as part of the Department's command structure, ensuring the participation of a civilian in shaping policies and making decisions on a broad range of issues faced by a major city police department.

With these dual roles come dual responsibilities. The OPA Director is charged with oversight, community outreach, and public reporting. At the same time, the OPA Director also has an obligation to administer an internal function within the Department and to participate in the Department's management. These responsibilities entail developing and implementing internal policies, advising the Chief of Police, working cooperatively with other commanders and managers, supervising sworn and civilian employees, and building trust and support among Department employees.

These roles are largely complementary, and distinctions between the two can be blurred. For example, the recent OPA report on Seattle's Response to Concerns about Racially Biased Policing discussed both OPA and Department-wide programs.

This Annual Report likewise addresses subjects pertinent to both roles. However, to satisfy the ordinance reporting requirements, this Report is primarily directed to the OPA's role as part of a larger civilian oversight mechanism. A separate, upcoming 2003 report is planned to more directly address the OPA's internal administrative role, focusing on changes directly affecting Department employees and efforts to establish their trust and support.

## INTRODUCTION

At a 2002 conference on civilian oversight of police, Professor Debra Livingston, a Professor of Law at Columbia University and a Member of the New York City Civilian Complaint Review Board, addressed the question of getting value from citizen review. Professor Livingston defined four critical dimensions of oversight: (1) Holding officers accountable for misconduct; (2) Keeping a record; (3) Identifying patterns and problems related to policies or supervision; and (4) Building public trust and community cohesion.

To Professor Livingston's four dimensions, OPA proposes another: (5) Providing a fresh perspective. Especially where, as in Seattle, the complaint investigation function remains internal to the police department, any citizen review effort should demonstrate its effectiveness at ensuring that the viewpoint of citizens is considered in the prevention and evaluation of complaints about police conduct.

Though discussion about police accountability typically focuses on the first dimension, accountability for misconduct, Professor Livingston echoed sentiments expressed by the OPA in previous reports when she said:

"[A]n exclusive focus on this aspect of value is not, I think, the way to maximize the value of citizen review – to ensure that the citizen review process is contributing all it can to the improvement of policing and the bettering of relations between communities and police. . . Holding officers to account through the after-the-fact investigation of complaints is only a part of the project of police reform. Efforts at improving police and improving the relations between police and communities ultimately involve change within the police organization. . ."

In the midst of a worsening local and regional economic crisis, it is appropriate to assess the value that Seattle's citizen oversight mechanisms provide for the community. While the OPA Auditor and OPA Review Board both have important roles, the OPA within the Seattle Police Department has primary responsibility for handling citizen complaints about police conduct.

This Report presents 2002 OPA activity and information, in both its oversight and internal administration roles, along the five dimensions outlined above:

- (1) **Accountability for misconduct.** This Report outlines information about citizen complaints received during calendar year 2002. Included in the Report are complete statistics on the classification of complaints, a breakdown of the allegations made, and the disposition of complaints, including any discipline.

Also outlined is a new policy addressing the problem of false complaints.



- (2) **Keeping a record.** Trends in the number of officers with multiple complaints are reported. Changes made to the administrative review process are also reviewed.
- (3) **Identifying patterns related to policy, training, or supervision.** Policy and procedure changes implemented or recommended by the OPA since last year's report are presented. Also outlined is a new program addressing broad risk management issues within the Seattle Police Department. A special section discusses OPA and Department policies that relate to the troubling issue of officer-involved domestic violence.
- (4) **Building trust.** This Report outlines OPA community outreach efforts. In addition, measures aimed at increasing satisfaction among participants in the complaint process are discussed. Updated information about OPA public reporting is also presented.
- (5) **Providing a different perspective.** Finally, the Report shares information about the process the Department uses to evaluate sustained cases and consider the imposition of discipline. Also outlined is information about the operation of the OPA in its review of cases and decision-making.

It is hoped that by emphasizing each of these dimensions, the OPA maximizes the value of citizen review of police complaints, and ensures that its efforts are properly directed toward its ultimate goal of helping to improve policing and the relation between police and communities.

## Acknowledgments

Neither of the Office's functions can be performed alone. The OPA Investigation Section runs a high-volume, sophisticated complaint investigation office. The six sergeants assigned to the Section provide direct customer service to complainants and employees every day. The sergeants' commitment and professionalism is evident in each report and investigative file I review. Special thanks are owed to Sergeants Mike Teeter and Dave Sweeney for their assistance with statistics and information for the monthly and annual reports.

Since October 2002, Captain Mark Evenson and Lieutenant Mike Kebba have more than capably led the Section. Their vision, wisdom, and management skills have been instrumental in implementing long overdue changes in policies, procedures, and practices that have increased fairness, objectivity, and efficiency in the investigative process. Both place great value on building trust with the public and department employees, and have moved the Section forward in each area.

The OPA Investigation Section is also most fortunate to have the highest quality administrative support. Leslie Thornburg's exhaustive knowledge of the policies and rules that govern complaint handling keep the entire process running reliably and smoothly. Her remarkable dedication and contribution have been acknowledged by each of the Section's commanders, and Leslie is receiving an award for excellence at the Department Awards Ceremony October 30.

I am also grateful each day for executive and administrative support within the Director's Office provided by my Associate John Fowler and my Administrative Assistant Kim Kubie. John Fowler produces the monthly OPA reports, assists with annual reports, coordinates public and internal outreach, serves as liaison with the OPA Review Board, staffs the Chief's Risk Management team and weekly meetings with the Chief of Police, and drafts and revises OPA policies and procedures. Kim Kubie maintains OPA records and databases, supports the OPA website and accountability hotline, assists the OPA Auditor, prepares all OPA case certifications and correspondence, and assists callers and visitors to the OPA or the Office of the Chief of Police. As the OPA is subject to significant scrutiny and answerable to multiple constituents, it could not meet its obligations without the professional, high-quality support it receives.

There are many Department employees that help to support the work of the Office of Professional Accountability. I consult regularly with the Department's legal advisors, Leo Poort and Mark McCarty, on OPA related issues. I receive excellent website and production support from Shanna Christie, advice on reports from Mimi Walsh, and external and internal outreach assistance from Gina Santo Domingo and Cathy Wenderoth. I am appreciative of the advice from and collaboration with the Audits and Inspection Section, Training Section, Patrol Operations, Human Resources, and the Employee and Community Service Bureau.

Finally, I acknowledge and thank Chief Kerlikowske for his commitment to police accountability and his support of the OPA. In recognizing that the Department and the public share the same ultimate goals, he makes it possible for the OPA to serve both.

## Executive Summary and Key Findings

### Accountability for Misconduct

- Total Complaints Decreased 2%:
  - 158 cases investigated by OPA-IS
  - 38 cases investigated by the Line
  - 97 Supervisory Referrals
  - 573 Contact Logs
- Supervisory Referrals Increased 194%
- 24% Reduction in Allegations of Unnecessary Force
- Allegations of Conduct Unbecoming Increased 23%
- Allegations were Sustained in 20 cases
- Discipline Meted out to 28 Employees
- Significant 2002 Discipline Cases
- False Complaints Referred to City Attorney

### Keeping a Record

- Number of Officers with One Complaint Decreased 23% (Total 146)
- Number of Officers with Multiple Complaints Decreased 35% (Total 36)
- Number of Officers with Multiple Use of Force Complaints Decreased 52% (Total 12)
- OPA Directed 16 Administrative Reviews
- New Administrative Review Procedures Established
- Analysis of 2001 Administrative Review Officers Completed

### Identifying Patterns Related to Policy, Training, or Supervision

- OPA Recommended Formal Changes to Internal Investigation Policies and Procedures
- OPA Made Recommendations on Policies Concerning Professional Standards to Chief of Police
- Special Policy Initiatives or Programs:
  - Response to Allegations of Biased Policing
  - Risk Management
  - Officer-Involved Domestic Violence

### Building Trust

- Outreach to Citizens With Limited English Proficiency
- Outreach to Youth
- Updates on Ongoing OPA Outreach Activity
- Initiatives to Improve Experience of Participants in Process
  - Enhanced information and feedback opportunities for complainants and employees
  - Decrease in length of investigation
  - OPA continues to urge adoption of mediation program
- Transparency Through Information to Complainants and Public Reports
- Upcoming 2003 Report to Address Outreach to Employees

### Providing a Different Perspective

- OPA Took Additional or Different Action in 25% of Investigations (45 Cases)
- OPA Changed Findings – Neither Finding “Sustained” – in 23 Cases
- OPA Changed Recommendation of “Sustained” to Other Finding in Five Cases
- OPA “Sustained” Finding Changed by Chief of Police in 11 Cases
- Two cases referred for Consideration of Charges for False Complaints
- A Discussion of Department and OPA Process for Case Evaluation and Imposition of Discipline









# **Accountability for Misconduct**



## ACCOUNTABILITY FOR MISCONDUCT

It is easy to see how the OPA's roles converge in the area of accountability for misconduct. Both the public and the Department have an interest in ensuring that police officers comply with the law and internal police policies. Complaints are a vital part of the means by which officers who fail to do so may be identified and held to account.

Because complaints are used for this purpose, it is critical that the process itself adhere to the highest principles of objectivity, thoroughness, and fairness. A sustained complaint has the power to strip a public employee of his or her chosen profession. The public should understand as clearly as do employees that this power should only be exercised where objective facts establish culpability.

The OPA is not, then, an advocate for either citizens or police officers. Rather, the OPA is an advocate for the integrity of the process itself. Knowingly false complaints threaten the integrity of the citizen complaint process. Though deliberate, malicious false complaints comprise a small percentage of total complaints, the OPA has instituted a policy to identify these complaints and take appropriate action. The new policy on False Complaints is set forth after the 2002 complaint statistics presented below.

Just as rigorous complaint examination is necessary to hold officers accountable for misconduct, it is also necessary to fairly and finally absolve officers of wrongdoing. Seeking only the truth in the facts presented, the OPA sustains and exonerates complaints with equal vigor.

The complaint statistics and False Complaint policy set forth below are important means of ensuring accountability.

### 2002 OPA Complaint Statistics

After a 30% increase in 2001, the first full year of operations of the OPA, total complaint activity held relatively steady. While investigations and contact logs decreased somewhat, a significant rise in supervisory referrals resulted in just a decrease of 2% in total complaint activity for 2002. As shown below, a total of 196 cases were assigned for full Line or OPA-IS investigation – a 14% decrease from 2001. Contact logs also decreased, from 626 in 2001 to 573 in 2002, a 9% decrease. In 2002, the number of complaints classified as Supervisory Referrals increased from 33 to 97, a 194% increase (see Figure A).

Figure A:

#### Complaints Against SPD Employees 1997 - 2002

Complaint Classification	1997	1998	1999	2000	2001	2002
OPA-IS Investigations	149	136	145	183	191	158
Line Investigations	56	41	41	32	36	38
Supervisory Referrals	106	100	26	22	33	97
Total Complaints	311	277	212	237	260	293

### Supervisory Referrals

A Supervisory Referral is a citizen or internal complaint of minor misconduct, e.g., service quality, tactics, demeanor, or adherence to policy that, if proven, would be appropriate for supervisory resolution. These complaints are forwarded to the affected employee's chain of command for review and resolution with the complainant and the employee. Supervisory Referrals do not result in discipline, nor are they subject to the investigation-review-findings process of Line or OPA Internal Investigations.

Rudeness is a subset of the broader category of Conduct Unbecoming an Officer and is used when the specific allegation is that of rude remarks or demeanor. Conduct Unbecoming an Officer is generally used where the allegations cover a pattern of conduct, which may include specific allegations of profanity, tone or volume of voice, or inappropriate remarks. When added together, it is clear that the majority of these complaints involve concerns about courtesy and professionalism.<sup>1</sup>

The most frequent allegation classified as Violation of Rules and Regulations was an alleged nametag violation. Thirteen complaints that officers were not wearing visible nametags were filed in 2002, nine of these by one complainant. Most of the complaints did not arise out of an incident or encounter with the police, but were generated when the complainant noticed an officer without a visible nametag, e.g., when working off-duty at a construction site with no nametag on his traffic control vest. If the named officer has had no other nametag violations alleged, and if there are no other allegations or aggravating circumstances present, such allegations are classified as Supervisory Referrals.

The spate of nametag complaints did result in stepped-up enforcement of the policy. Supervisors reinforced the requirement with employees at patrol roll calls. In addition, prior to deployment at demonstrations or events, squad members were instructed to have visible identification on the outermost garment worn. Supervisors kept a roll of masking tape and markers available as back-up for officers called into work at the last moment who may not have their own equipment available. As a result, there has been a decrease in nametag complaints in 2003, with just one complaint following multiple anti-war protests.

Other frequent complaints assigned as supervisory referrals were complaints about service quality (17), misuse of authority (7), and mishandling of personal property or evidence (5). Four complaints generated internally were also assigned for supervisory resolution.

In addition to the nametag complaints, the dramatic increase in Supervisory Referrals in 2002 can also be attributed to a deliberate effort to push accountability further down the chain of command to first-line supervisors. Though it is important to have a centralized bureau to accept and investigate complaints alleging serious misconduct, there are multiple benefits to supervisory review – usually by the officer's sergeant or lieutenant – of minor complaints.

First, an SR can be resolved much more quickly. After the initial classification, the supervisor can immediately contact the complainant and speak directly with the officer. The situation can be discussed, problem-solved, and closed within just a few weeks.

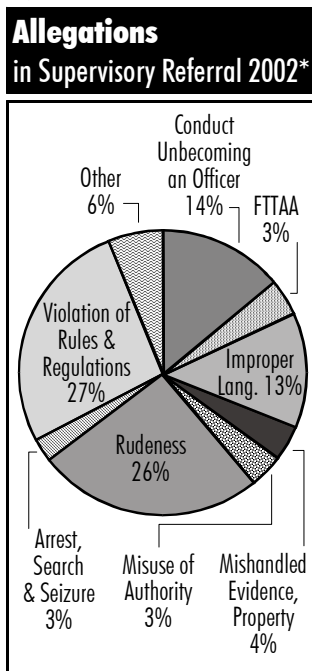
Second, complaints from citizens can illuminate underlying community concerns or tensions. Direct involvement in resolving constituent problems improves the quality of service and builds relationships and trust in the community.

Finally, input and feedback from a supervisor has a greater impact because it is more personal. The officer and the supervisor have an ongoing relationship, and the officer knows the supervisor understands the situations confronting the officer on the street. Through the resolution of a citizen complaint, a supervisor is able to send strong messages about standards and expectations of conduct and service, serve as a mentor and supporter of his or her officers, and keep watch for behaviors or attitude that may signal trouble ahead. Through this ownership and sphere of influence, a true culture of accountability can be fostered and reinforced.

Figure B:

<b>Number and Types of Allegations in Cases Assigned For Resolution by Supervisory Referral</b>	
<b>Type of Allegation</b>	<b>No. of Allegations</b>
Rudeness	30
Violation of Rules and Regulations	41
Conduct Unbecoming an Officer	31
Misuse of Authority	4
Failure to Take Appropriate Action	5
Unnecessary Force	0
Mishandling Property or Evidence	5
<b>Total</b>	<b>116</b>

Figure C:



\*N = 116 allegations

<sup>1</sup> Indeed, when the 120 allegations of conduct unbecoming and rudeness from 2002 Line or OPA-IS investigations are considered, it becomes apparent that 41% of all classified allegations involve complaints about remarks, profanity, or other behavior construed as rude or unprofessional. This striking finding will be the subject of further OPA analysis and recommendation, and public report.

## Sample Content from Supervisory Review Letters

“We would like to take this opportunity to thank you for your comments and concerns for one of our employees. We found your input very helpful in giving the Officer and his Supervisor an opportunity to discuss how his actions may be perceived by citizens and to develop ways dealing with similar situations more smoothly.

It was also helpful to have the chance to share the Officer’s perception of the events with you and to at least, in part, explain his actions.”

 **City of Seattle**  
Gregory J. Nickels, Mayor  
Seattle Police Department  
R. Gil Kerlikowske, Chief of Police

October 29<sup>th</sup>, 2002

Mr. [REDACTED]  
[REDACTED]  
[REDACTED]

RE: Office of

Dear Mr. [REDACTED]

Thank you

Accountant

Departments

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It is

also

If

 **City of Seattle**  
Gregory J. Nickels, Mayor  
Seattle Police Department  
R. Gil Kerlikowske, Chief of Police

February 14, 2003

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Mr. [REDACTED]

We have concluded our investigation into the allegation that an officer  
attacks towards you on the evening of [REDACTED]  
am pleased to inform

 **City of Seattle**  
Gregory J. Nickels, Mayor  
Seattle Police Department  
R. Gil Kerlikowske, Chief of Police  
September 26, 2002

Ms. [REDACTED]  
[REDACTED]  
[REDACTED]

Dear Ms. [REDACTED]

Thank you for providing me with valuable feedback about your contact with Officer [REDACTED]  
[REDACTED]

Due to the nature of the law enforcement role we cannot expect that all contacts with our officers are pleasant experiences. We do expect, however, that the contact be handled with professionalism. To that end, I am happy that you voiced your concerns to me. I spoke to Officer [REDACTED] about your recent interaction with him and I regret that you feel that he treated you unprofessionally.

I can assure you that all three of us agree that law enforcement professionals must treat everyone with respect and courtesy. It increases the quality of life for the citizens we serve as well as for the officers on the street.

Thank you again for taking the time to discuss this issue with me. If you have any questions or concerns, please contact me at (206) 233-[REDACTED]

Very truly yours,

R. Gil Kerlikowske  
Chief of Police



Michael B. Watkins  
South District Operations

## Changes in Contact Logs

For many years, the term “contact log” has been used to describe citizen contacts to OPA or OPA-IS that were reviewed and recorded, but not assigned for full investigation. In the OPA’s second full year, 573 citizen contacts to OPA or OPA-IS were classified as a “contact log.” The OPA agreed with the recommended contact log classification in all but a few instances in 2002.

In the 2001 annual report, the OPA discussed contact logs at length and indicated its intention to (1) improve data tracking methods to permit further analysis of contact logs, and (2) recommend the term “contact log” be replaced by a term that more accurately depicts the substantial preliminary investigative work, interaction with complainant, and appropriate supervisory follow-up that such complaints entail. The OPA is pleased to report that both improvements have been implemented.

Figure D:

### Categorization of Contact Logs

In 2002, contact logs were categorized into 18 different subject matter headings. A summary of that information is below.

#	Description	Count	Percent
1	Service Quality	142	25%
2	Possible Mental Issues	60	10%
3	Disputes Report/Citation	66	12%
4	Biased Policing: Traffic	12	2%
5	Biased Policing: Other	17	3%
6	Attitude/Demeanor	86	15%
7	Inquiry/Request/Referral	104	18%
8	Discretion in Enforcement	34	6%
9	Off-Duty Traffic Control	6	1%
10	Demonstrations	25	4%
11	Special Events	0	0%
12	Sporting Events – SAFECO	5	1%
13	Sporting Events – Seahawks	1	0%
14	Sporting Events – Key Arena	1	0%
15	Workplace Issues	16	3%
16	Private Conduct	5	1%
17	Traffic Violation by Officer	23	4%
99	Other	59	10%

Note: Percentages add up to more than 100% because more than one category can apply to each contact log.

Note: Category 5 includes allegation of both prejudicial and preferential treatment based on bias.

#### Contact Log:

An OPA Investigation Section computerized form used to document inquiries from both inside and outside the department. These inquiries range from de minimis complaints to nonsense communications. When appropriate the inquiries will be forwarded to the proper unit for follow-up action, i.e., Parking Enforcement, Traffic, Community Police Team(s), Animal Control, etc.

Again, it is important to note that while not investigated, the contact logs are not ignored. Contact logs are routinely forwarded to the employee’s chain of command and/or to the incident commander. In this way, supervisors see the kinds of circumstances that can lead to questions and complaints, and may be alerted to a potential problem area in service quality, policy, or training.

In addition to this routine dissemination, the OPA also convened a meeting of captains and assistant chiefs to share information about the 2002 complaint statistics, including contact logs.

With contact logs and an increased number of supervisory referrals being handled by the precinct, line supervision has a direct interest in complaint avoidance, in part by modeling and encouraging positive contacts with citizens.

### **New Terminology**

As set forth in previous reports, the term “contact log” is confusing, and did not adequately reflect the significant investigative effort made. Moreover, as all contacts that were not investigated were classified as contact logs, the number of actual complaints about employee conduct was over-reported.

As of July 1, 2003, the term Preliminary Investigation Report (PIR) is now used in place of contact logs. A PIR is defined as:

[T]he record of a complaint that, after an initial investigation and review, is determined not to allege a violation of the Department’s Standards of Conduct. PIRs may include citizen inquiries or complaints about the enforcement of the law, Department policy, procedures or tactics, or concerns about service quality, including promptness of response and demeanor. OPA-IS gathers and reviews relevant documentation, explains the results of its review to the complainant, and forwards the complainant’s concerns to the affected bureau. No further follow-up by OPA-IS is conducted, however the chain of command may follow up as appropriate.

The old term “contact log” is still preserved and serves as:

[D]ocumentation of a contact that is not a complaint, or is a complaint that does not involve an SPD employee. This classification would include inquiries for explanation of policies, referrals, requests for information, customer service requests, and/or other issues that require no investigative effort and/or additional action.

This change clarifies the criteria used in classification, acknowledges the scrutiny applied to all complaints, and will more accurately capture citizen complaint activity.

## Complaint Investigations

Complaints warranting full investigations are classified as either a Line Investigation or an OPA-IS investigation. Line Investigations are conducted by the named employee's precinct or section commander (or civilian equivalent) when the alleged misconduct, if true, would be a violation of the Department's policies, but the investigation is straightforward and may be handled objectively by the line. Thirty-eight Line Investigations were conducted arising out of complaints received in 2002.

An OPA-IS Investigation is conducted in response to a citizen or internal complaint alleging serious misconduct, or the possibility of criminal activity. The number of these for 2002 allegations decreased from 191 in 2001 to 158 for 2002.

Of the 158, 131 (83%) were complaints from external sources, i.e., from citizens who were the subject of or witness to the alleged misconduct. The remainder were internally generated complaints, usually by an employee's supervisor or chain of command.

### Type of Allegations Against Officers

Figure E depicts the number and types of allegations involved in cases assigned for Line or OPA-IS investigations in 2002.

Figure E:

<b>Number and Types of Allegations in Cases Assigned For Line and OPA-IS Investigations</b>	
<b>Type of Allegation</b>	<b>No. of Allegations</b>
Unnecessary Force	80
Conduct Unbecoming an Officer	105
Violation of Rules and Regulations	82
Mishandling Property or Evidence	14
Misuse of Authority	20
Violation of Law	8
Failure to Take Appropriate Action	14
Racial Profiling	1
Rudeness	5
<b>Total</b>	<b>329</b>

Seattle Police Department, 2002    N = 329 allegations in 196 investigated cases



To compare 2002 to previous years, Figure F shows allegations made in cases assigned for investigation from 1997 through 2002.<sup>2</sup>

Figure F:

<b>Number and Types of Allegations in SPD Internal Investigation Cases, 1997 - 2002</b>						
<b>Type of Allegation</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Unnecessary Force	79	64	61	94	105	80
Conduct Unbecoming an Officer	39	35	50	65	85	105
Violation of Rules	42	48	36	21	71	82
Misuse of Authority	39	39	21	20	19	20
Improper Language	45	34	8	5	6	5
Failure to Take Appropriate Action	23	29	20	12	12	14
Violation of Law	7	5	15	12	15	8
Mishandling Property/Evidence	14	16	11	16	23	14
Racial Profiling					2	1
Other	63	68	20	35	15	0*
<b>Total</b>	<b>351</b>	<b>338</b>	<b>242</b>	<b>280</b>	<b>353</b>	<b>329</b>

Seattle Police Department, 1997 - 2002

N= 329 Allegations in 196 cases

\*all allegations were categorized.

Two significant changes can be seen comparing 2001 to 2002.

### Reduction in Complaints of Unnecessary Force

Complaints from citizens alleging unnecessary or excessive force were down 24% from 2001. This reduction cannot be attributed solely to a reduction in the number of reported use of force incidents department-wide, as these were down merely 13% (856 in 2001 to 747 in 2002).

Remember, too, that use of force by officers is relatively infrequent. It is estimated that in 2002, SPD officers responded to 269,000 dispatched calls, made 221,000 on-view citizen stops or contacts, and arrested about 23,000 people. Force was reported or alleged just once for every 656 contacts, or about .018% of the time. This compares favorably with national data reflecting uses of force in just under 1% of police/citizen contacts.

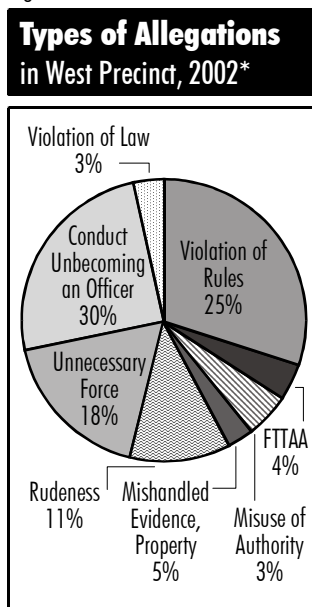
### Increase in Complaints of Conduct Unbecoming

Conversely, allegations of complaints of Conduct Unbecoming an Officer increased 23%. Seattle is not alone in having complaints of rudeness lead the way among citizen complaints. Portland recently reported a similar experience.

The previous OPA Auditor, Judge Terrence Carroll, expressed his concern about rudeness complaints in his final report. Now, with the finding that over 40% of all classified allegations involving complaints about rude remarks, profanity, or other behavior construed as rude or unprofessional, it is clear that the Department needs to develop a plan aimed at reducing these complaints. The OPA will work with the Training and Operation Bureaus to develop and implement a program, preferably one with a proven track record and measurable results.

<sup>2</sup> The data for years prior to 2001 was taken from earlier reports of the IIS Auditor, which combined supervisory referrals with line and IIS investigations. For comparison purposes, then, the 2002 data in Table E include supervisory referrals.

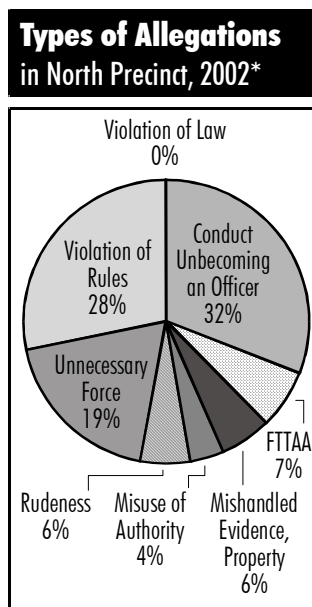
Figure G:



\*N = 187 allegations

Though the West Precinct recorded the largest number of allegations in 2002, it must again be noted that the precinct is also the site of many special events— as many as 150 per year— that generate complaint activity.

Chart H:



\*N = 74 allegations

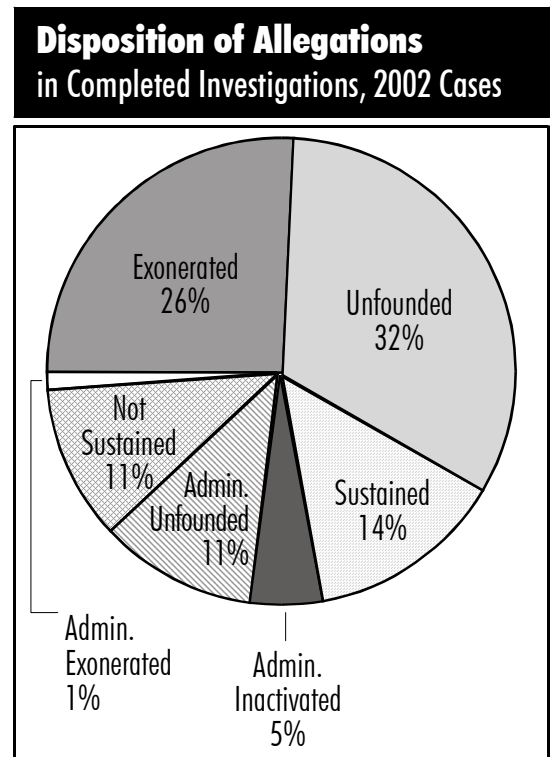
## Disposition of Complaints

To date, 183 OPA-IS and Line Investigations of 2002 complaints have been closed. Allegations have been sustained in 20 of these cases, or 11% of the complaints. Looking at allegations rather than cases, 14% of the allegations have been sustained. The dispositions for completed allegations are shown in Figure K below.

Allegations of “conduct unbecoming an officer” continue to be the largest category of complaints likely to be sustained (103), followed by “rule violation” allegations (98). Allegations of “unnecessary force”, (97) while comprising a large category of complaints, remain unlikely to be sustained.

For a thorough discussion of the sustain rate of SPD and other agencies around the nation, see the OPA Annual Report 2002.

Figure K:



Through September 15, 2003

## Discipline

Twenty-eight employees were recommended for discipline for conduct reported in 2002 and for cases closed from earlier investigations. Figure L provides information on the type of discipline imposed.

### Consistency of Discipline

SMC 3.28.810(G) charges the OPA with providing analysis to the Chief of Police regarding disciplinary action in order to promote consistency of discipline. The OPA has worked this year with the Department's Human Resources Department to improve records kept of past discipline to aid in the consideration of appropriate discipline. Currently, Human Resources maintains a database of all discipline imposed on sworn employees and for what allegation, covering the time period of 1997 to 2003. In addition, OPA has asked HR to compile a database that includes, for comparison purposes, discipline imposed on the Department's civilian employees as well.

Figure L:

<b>SPD Sworn Employees Disciplined in 2002/2003 through 9-15-03</b>	
<b>Type of Disciplinary Action</b>	<b>Number of Times Discipline Imposed</b>
Termination	3
Demotion	1
Suspension	10
Written Reprimand	14
Oral Reprimand	2
Transfer	7
<b>Totals</b>	<b>37*</b>

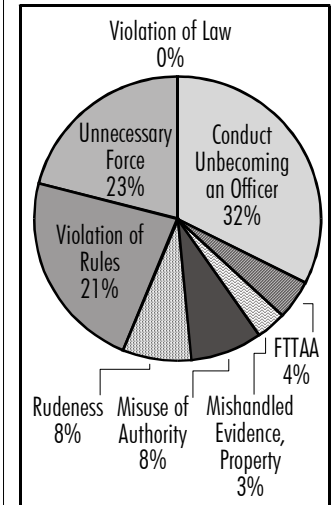
N = 28 Employees

Includes cases initiated prior to 2002 and 2003 cases.

\*Number of employees and complaints differ due to multiple instances of discipline.

Figure I:

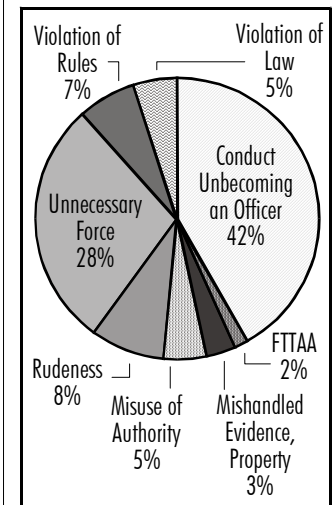
### Types of Allegations in South Precinct, 2002\*



\*N = 114 allegations

Figure J:

### Types of Allegations in East Precinct, 2002\*



\*N = 60 allegations

## Significant 2002 Discipline Cases

- *Arrest of patrol officer for distribution of heroin.* Acting on only a vague tip, an SPD Detective followed a lead that a Seattle patrol officer may be shaking down drug dealers and passing the drugs to other users on Capitol Hill, apparently in exchange for marijuana for his own use. The Detective's efforts launched an investigation by the FBI's Public Corruption Task Force, working in cooperation with the OPA Investigation Section. In just over two months, the investigators conducted a successful undercover operation that culminated in the officer's arrest for felony distribution of heroin, and his immediate termination. The investigation confirmed that the officer acted alone, and no other officers were implicated. There was likewise no evidence that any other officers even knew of the officer's actions. Chief Kerlikowske held a press conference announcing the arrest and termination, stating: "He has forever tarnished this badge, and it will never be issued again and, in fact, it will be destroyed." He added, "It's a sad conclusion, but one we took with pride, because essentially, we cleaned our own house."

- *Investigation into cheating on a promotional exam.* A City employee in the Personnel Department came forward with suspicions that Department employees had cheated on the 2002 promotional exam for the rank of Sergeant. The OPA-IS conducted a thorough and vigorous investigation. Over thirty-five witnesses were interviewed, and approximately 135 documents were examined as part of a 2,700-page investigative file. The evidence substantiated that one officer who had access to confidential information about the oral portion of the exam shared that information with one of the candidates for promotion, and the candidate used the information to unfair advantage. Following an exhaustive review process that included eight commanders, conduct unbecoming charges were sustained against both officers, and their employment was terminated. Again, the investigation established that the incident was isolated. As a result, Chief Kerlikowske's confidence in the integrity of the promotional list was restored, and the list is in use for future promotions.

## Policy Addressing the Problem of False Complaints

Most complaints, even those determined to not have merit, do not appear to be complete fabrications. However, the OPA has reviewed investigations where the evidence clearly indicates that the allegation was entirely false. In addition to the enormous distress to the officer caused by such complaints, the Department and the City incur significant costs investigating and reviewing them. Chief Kerlikowske and the OPA addressed this issue with the City Attorney's office, and devised an internal procedure for referring false complaints for possible prosecution for a violation of the misdemeanor of False Reporting (SMC 12A16.040(B)). In order for cases to be referred to the City Attorney for consideration of prosecution, there must be strong evidence that a report of serious misconduct contains knowingly false information. OPA-IS investigators may make a recommendation for review and consideration to the OPA-IS Commander if they believe a complaint meets the criteria. Should the commander concur, the referral is forwarded to the OPA Director for review. If the OPA Director agrees with the referral recommendation, the case will be forwarded to the City Attorney's office. The OPA will track and report on the number and types of cases referred. The named officer(s) and their representative will be given notification of the referral.

To date, two cases have been forwarded for consideration of charges.



# Keeping a Record



## KEEPING A RECORD

Previous OPA reports have discussed at length the reasons why there will always be a significant number of complaints in which the facts cannot be determined definitively. Focusing exclusively on whether complaints are sustained overlooks the fact that complaints can be a significant source of information, even if the facts cannot be fully determined.

Considering complaints as sources of vital information, the OPA attempts to maximize their value. First, the Report has already discussed the value of ensuring that first-line supervisors are actively involved with resolving citizen complaints. Second, the classification and coding of different allegations can offer insight into trends or areas of concern for the community. In addition, the upcoming section on Identifying Patterns discusses how the complaint process can offer value by noting patterns and problems in policy, training, or supervision.

The OPA is working toward maintaining complaint information in a manner that permits access now and in the future, and for a variety of purposes. As the Office matures, it is developing more sophisticated ways of reading complaints and noting relevant information.

This section describes the value of keeping a record of complaints as a way to signal possible organizational problems. Included is information about multiple complaints, and steps the OPA and the Department have taken to improve response in this area.

### Officers with Multiple Complaints

Last year the OPA reported a troubling increase in the number of officers with multiple complaints against them.<sup>3</sup> For 2002, the trend has reversed. Figure M compares single and multiple complaints against officers for 2000, 2001 and 2002. As shown, single complaints decreased 23%, while multiple complaints – still involving a small number of officers – were down 35%.

This trend continues in looking at use of force allegations. Officers receiving multiple use of force complaints are depicted in Figure N below. Overall, the number of officers involved in use of force complaints decreased by 18%. Likewise, the number of officers with multiple use of force complaints against them showed a more significant decrease of 52%. This is a dramatic reversal of 2001 numbers, showing these numbers on the rise.

Figure M:

Number of Officers with Single and Multiple Complaints Against Them*			
Officer Complaint Category	Number of Officers in 2000	Number of Officers in 2001	Number of Officers in 2002
Officers with one complaint	130	188	146
Officers with two complaints	24	39	27
Officers with three or more complaints	7	16	9
Total complaints	161	243	182

Seattle Police Department, 2001 and 2002

\*Complainants may name more than one officer.

The issue of officers with multiple complaints receives a lot of attention, as it should. Looking at 2001 data, just four percent of sworn officers (50) generated 40.7% (118) of the complaints received in 2001. This represents a significant diversion of resources, and can cause an erosion of goodwill and public confidence in the Department by the public. As described below in the section on Administrative Reviews, the OPA is taking steps to strengthen programs aimed at officers with multiple complaints.

<sup>3</sup> Though a small number of officers were involved, multiple complaints in 2001 were up 77% over 2000.

The following are suggested guidelines for supervisors to follow when conducting an administrative review:

#### STEP 1:

##### TALK TO THE EMPLOYEE

- Notify the employee that he/she has been identified for administrative review.
- Explain that the process is not disciplinary, and is intended to support the employee's career development.
- Reassure that it is recognized and understood that many employees identified for administrative review will have shown adequate to excellent job performance and thus no intervention will be necessary.
- Solicit the employee's view of what may be affecting the number of or increase in complaints.

#### STEP 2:

##### REVIEW THE EMPLOYEE'S PERFORMANCE

This review should not be restricted to a review of the complaints that may have triggered administrative review.

Instead, the supervisor should consider, on a case-by-case basis, review of the following items or records:

- Assignments in the relevant time frame
- Counseling or performance issues during that time frame
- Input from current or previous supervisors
- Commendations and other positive information
- Activity level/reports
- Use of force reports
- Sick or other leave usage
- Overtime and off-duty worked
- Accidents
- Complaints, prior discipline, tort claims/lawsuits

In addition, the supervisor should also consider whether there are any indicators that the employee is struggling with problems related to relationships, finances, drugs and/or alcohol.

Figure N:

### Number of Officers with Single and Multiple Use of Force Complaints Against Them\*

Officer Complaint Category	Number of Officers in 2000	Number of Officers in 2001	Number of Officers in 2002
Officers with one use of force complaint	79	91	83
Officers with two use of force complaints	9	18	11
Officers with 3 or more use of force complaints	4	7	1
<b>Total Complaints</b>	<b>92</b>	<b>116</b>	<b>95</b>

Seattle Police Department, 2001 and 2002

\*Complainants may name more than one officer.

However, perspective is important here. Consider the following from 2001 data:

- 1% of officers had three or more complaints filed
- 3% of officers had two or more complaints filed
- 14% of officers had one complaint filed, and
- 82% of officers had no complaints filed

In addition to stepped-up efforts to address problem officers, the Department should explore ways to encourage and reward the majority of its officers who consistently do difficult and dangerous work in an exemplary manner. Seattle's citizens should likewise find comfort and take pride in this impressive track record.

### Administrative Reviews

An administrative review (AR) is a review by a supervisor of an officer's performance conducted when the number of complaints indicates a possible problem. Upon notification by the OPA, the officer's chain of command will review the complaints, regardless of the findings, and may gather additional information and input. The employee's chain of command will report on their review and recommendations, if any.

The administrative review is not a disciplinary procedure, but is rather designed to focus in on possible problem areas. An AR is completed for any employee who has three or more complaints investigated in a one-year period, four or more complaints in a two-year period, or two or more claims or lawsuits in a one-year period.

This year, the OPA directed that 16 administrative reviews occur as a result of 2002 complaints, an increase over the 13 ordered in 2001.

As stated in previous OPA reports, the administrative review system is rudimentary. The Department is currently involved in negotiations with the Police Guild over the development and implementation of a progressive, comprehensive early intervention system. In the meanwhile, the OPA has made the following changes to its procedures to enhance the usefulness of the existing administrative review system.

#### Timing of Review

Past practice had been to review end-of-the-year complaint statistics to determine which employees were candidates for administrative review. The chain of command was then given a list of the names of qualifying employees.



That practice has been changed. OPA now notifies the chain of command immediately upon qualification of an officer for administrative review. This change could lead to earlier detection and intervention for an officer experiencing difficulties.

### **New Guidelines**

The administrative reviews tended to be perfunctory, consisting merely of a recap of the complaints that triggered the review. Guidelines were developed for supervisors to follow in conducting the review. The guidelines outlined a four-step process, detailed in the margin columns to the right and left.

### **Meetings with Commanders**

The chain of command regularly receives copies of contact logs, is assigned Supervisory Referrals and Line Investigations to conduct, and reviews all OPA-IS investigations, but they were not directly provided compiled and analyzed data relating to their command. Meetings were initiated to provide precinct and section commanders with data and trend information that might assist them in managing their employees.

At the first meeting, OPA delivered to commanders the list of employees in their command who met the criteria established for administrative review, discussed the new guidelines, and provided a sample template to follow when writing their administrative review report.

In addition, commanders were given 2002 statistics; a comparison by precinct showing complaint data as a percentage of the workforce strength; precinct (or specialty unit) specific information; a contact log summary; OPA EEO complaint data; and sample supervisory referral response letters.

### **Analysis of 2001 Administrative Review Candidates**

An analysis of employees who qualified for administrative review in 2001 was conducted to review for trend or pattern information that may serve to identify possible causes of behavior that result in a high number of complaints. In addition to the thirteen officers deemed eligible from 2001, a secondary pool of five officers who came close to meeting administrative review criteria was included. Criteria reviewed included gender, ethnicity, age, tenure, marital status, military service, academy graduation, commendations, assignments, education, and field training program.

There were no clear trends or patterns identified in the analysis, but areas for further study were noted. The data did support the known workload information indicating that the majority of the complaints are generated during the "third watch," the 7:00 pm to 4:00 am shift, and in areas with the greatest activity (protests, traffic, service providers, large sporting facilities and civic venues).

OPA will repeat this review and analysis using updated data.

Neither the current administrative review process nor the anticipated, more sophisticated early intervention system is disciplinary. Moreover, it is recognized that many employees identified for administrative review will not require any intervention. However, the process can also lead to the identification and support of employees who show symptoms of job stress, training deficiencies, or personal problems that affect job performance, or who engage in conduct that may be contrary to the Department's mission. Timely and appropriate intervention, tailored to an employee's specific needs, can protect and advance his/her careers, while protecting the interests of the citizens served.

### **STEP 3:**

#### **MAKE RECOMMENDATIONS**

Again, after a complete review, the supervisor may see no indication of any performance problems, and recommend that the administrative review be completed with no intervention. If the supervisor instead determines that the employee may benefit from some form of intervention, the supervisor should make a recommendation tailored to the specific needs of the employee. Intervention options may include:

- Additional performance counseling by supervisors
- Written corrective action plan
- Peer mentoring
- Training
- Limits on overtime or off-duty work
- Referral to EAP or other programs
- Re-assignment
- Fitness for duty examination

### **STEP 4:**

#### **REPORT BACK, DOCUMENT & MONITOR**

The results of the review need to be promptly and clearly articulated to the employee. The supervisor should answer any questions the employee has about the process or the recommendations and reference any resources that may be available to the employee.

The supervisor should document the discussions with the employee, the review process, and recommendations.

Finally, the supervisor should monitor or suspense to document successful completion of any recommended intervention or evaluation period, and make final recommendations for completion.

The guidelines serve both to achieve greater consistency and to ensure comprehensive, meaningful reviews.





# Identifying Patterns



## IDENTIFYING PATTERNS

### OPA Policy Review & Recommendation

Complaint review and investigation is an important function, and an essential component of accountability in law enforcement. But complaint review is a backwards, rather than forward-looking function. Even discipline imposed for a particular incident may not have a far-reaching nor enduring impact.

Policy review and recommendation is the oversight function with the best shot at achieving long-term improvements in policing through organizational change. A risk manager looks at a lawsuit from a different perspective than that of the attorney, and with a practiced eye can glean lessons learned from lawsuits to reduce future exposure. Similarly, in the routine review of all complaints and investigations, the OPA is well positioned to note recurring issues or trends that may be addressed through improvements in training, supervision, or policy.

Since last year's report, the OPA has implemented or recommended policy and procedure changes in two areas: (1) internal investigation policies, and (2) policies concerning professional standards within the Department. Both are summarized below. Except as otherwise noted, the Chief of Police accepted the recommendations and they are in various stages of implementation.

In addition, the OPA made major changes to the SPD manual section governing the complaint investigation process. Those changes are awaiting publication and will thus be outlined in the upcoming Report focusing on the OPA's internal investigation role.

### Recommendations on Internal Investigation Policies and Procedures

**Immediate Notification to OPA-IS of Serious Allegations.** OPA reviewed a file documenting an investigation into allegations by an arrestee that SPD officers had taken drugs from him. A review of the allegations produced no evidence to substantiate the claims. However, by the time OPA-IS investigators learned of the allegation, the suspect was no longer in custody and attempts to locate him proved futile. With Chief Kerlikowske's approval, OPA drafted a new section for the SPD manual requiring immediate notification to OPA-IS of serious allegations or those that require an immediate investigative response.

**OPA Review of Public Testimony Alleging Police Misconduct.** Following a major event, demonstration, or unusual occurrence, OPA-IS typically fields multiple inquiries or complaints from citizens. Many of these same citizens, and others who have not contacted OPA, also attend meetings of City Council committees to give public testimony about their experiences and allegations. OPA has instituted a practice to review the testimony for comparison to existing complaints or for new allegations. The review is documented and any new allegations are classified according to established procedures.

**Reporting of Complaints of Misconduct.** Review of OPA files revealed some uncertainty about the extent of the obligations of an individual officer who becomes aware of an allegation of misconduct. Revisions and additions to existing manual sections were made to clarify expectations and obligations. These changes are awaiting publication.

**Investigation of Cases Involving Officers with Multiple Complaints.** As part of an interim initiative to address the problem of officers with three or more complaints, the OPA instituted a new practice. If new allegations against these officers are received and classified for investigation (as opposed to Supervisory Referral or Preliminary Investigation Report – formerly “contact logs”), OPA will conduct the investigations, rather than the line.

**Improved Documentation of Discipline in OPA Files.** It was agreed that a section would be created in the original OPA-IS file with documents related to the discipline meeting, including a copy of the named employee's complaint history card; notes documenting the attendees and final recommendation from the meeting; and final Disciplinary Action Reports.

**Classification of Complaints Where Complainants Indicate They Do Not Want to File a Formal Complaint.** Former Auditor Judge Terrence Carroll raised concerns about permitting the complainant's wishes to dictate OPA classification decisions. Certainly the complainant's intent or desire could be one factor in classification; could impact his or her further participation in the investigation; and could be a factor in reaching a finding and/or determining appropriate discipline. However, OPA agreed with the Auditor

that the Department's obligation to investigate remains the same. Further, OPA does not allow the desire of complainants to dictate classification of complaints upward. Finally, it may be unfair to officers if treatment of similar conduct were wholly dependent on the relative tolerance or indignation of the recipient. Therefore, it was determined that this issue would be handled in the future by OPA thanking the complainant, confirming that they do not wish to participate in any further investigation, informing them that their wishes will be recorded as part of the file, but that OPA will classify the complaint according to established criteria and procedures.

**Line Investigations.** The OPA noted that two Line Investigations had been conducted by lieutenants that either had prior contacts with the complainant, or involvement in the incident that gave rise to the complaint. Both complaints were thorough, and contained a thoughtful analysis and recommendation. However, the appearance of a fair and objective investigation was compromised by the lieutenants' connection to the complainant or the case. An investigator must be neutral, in fact and appearance, and cannot be either a fact or credibility witness. OPA addressed this issue with the Operations Bureau. It was agreed that if staffing limitations of a particular precinct or watch created a conflict, a different precinct would step in to conduct the line investigation.

**Patrol Car Videos.** OPA-IS investigators were instructed to take steps to preserve or immediately obtain the video upon learning of a complaint arising out of an incident that may have been captured by one of the video cameras in use in the Department's Camera-in-Cars pilot program.

**Allegations of Unnecessary/Excessive Use of TASERS.** These allegations can present facts and pose issues different from those presented by typical use of force investigations. OPA-IS is assessing the need for the development of criteria, standards, and training for the investigation and review of allegations that TASER use was unnecessary or excessive.

**Supervisory Referral Packet.** OPA reviewed several Supervisory Referral packets that contained no reference that the chain of command had reviewed the Supervisory Referral with the officer. As that is one of the minimum requirements of completion of an Supervisory Referral, OPA-IS revised the form to include a required section referencing review with the officer.

**Distribution of Operations Orders and After-Action Reports.** OPA-IS investigators field numerous inquiries and complaints from citizens in the days following major events, demonstrations, or unusual occurrences. They are able to provide better information to citizens if they are fully briefed on the operation. If complaint investigations are opened, it is more efficient to have ready access to the orders that show assigned personnel, major incidents or arrests, and uses of force. OPA-IS is now included in the routine distribution of such orders and reports within the Department.

## Recommendations on Policies Concerning Professional Standards

### Recommendations by OPA-IS Section:

**Personal Property Forms.** The OPA-IS Commander and Lieutenant noted a problem with inadequate documentation and/or inconsistent practices regarding inventory of personal property of arrestees. The OPA-IS command worked with the Operations Bureau to create a new form and procedures to better account for personal property. The change benefits arrestees by protecting against loss or theft of property. It also works to the benefit of individual officers and the Department as a whole, by creating a paper trail that can pinpoint whether an alleged loss is the responsibility of police or jail personnel.

**Confiscation/Retention of Signs Seized in Protests.** In the wake of the anti- Iraq war protests, the OPA-IS Lieutenant noted a spate of inquiries and complaints about the confiscation and retention of signs by the police during protests. The Lieutenant worked with the Legal Advisor and Special Deployment to clarify the law and policy in this area, and arranged for supervisors and officers working the protests to be briefed.

**Policies Governing Payments to Confidential Informants.** In reviewing a misconduct investigation, the OPA-IS Lieutenant noted that the Department policy governing payments to confidential informants was somewhat vague and did not clearly prohibit non-cash payments. At the Chief's direction, the Department acted on the OPA-IS recommendation and revised the language in the policy.

### Recommendations by OPA Director

**Use of Force Reporting.** Review of an investigation into an allegation of failure to report use of force highlighted a significant discrepancy in interpretation and practice regarding reporting a certain type of force, i.e., struggling to handcuff a passively resisting subject. The officer had described the force in an incident report and screened the arrest with two sergeants, both of whom advised that no use of force was required under the circumstances. A commander likewise saw no reportable use of force. OPA proposed revising the language in the manual governing use of force to clarify the circumstances under which force must be reported. These revisions have been completed and, along with other changes in the use of force policy, are near implementation.

**Supervisory Review of Use of Force.** In review of an investigation into allegations of unnecessary force, OPA noted a concern with review procedures for uses of force by members of the precinct's proactive anti-crime teams. The investigation showed that the supervisor on the scene elected not to talk to the complainant personally because he had been working undercover as an active member of a buy/bust team. The supervisor directed a "team member" to speak with the arrestee. However, the only team member to speak with the arrestee was the arresting officer who had used the force. The arresting officer did not document the conversation with the arrestee in his statement. OPA proposed appropriate revisions in its proposal for changes to use of force policies.

**Vehicle Frisks & Training:** Following review of an OPA investigation, OPA advised the Operations Bureau commanders to review with their officers the law on what constitutes adequate justification for "pat-downs" of vehicles in the lunge area for weapons. **Documentation:** In another case, a complainant's car was searched during a traffic stop because officers stated that it appeared the complainant was making furtive movements as though he were hiding something under the seat. The car contained no contraband, and the complainant was cited and released. The OPA was concerned that the only record of the incident is the citation for the traffic violation. This kind of encounter is a significant event for the citizen involved. Moreover, a pattern of such stops and searches could be indicative of biased policing. Therefore, the OPA recommended that the Department's policies on documentation of searches be broadened to include vehicle frisks. The Chief of Police did not accept this recommendation.

**Identification of Individuals as "Suspects" in Reports.** Previous OPA recommendations addressed the issue of formal documentation of incidences of significant detention, i.e., handcuffing or other "unarrests," often of individuals detained due to mistaken identification. Review of a 2002 case added another issue that should be addressed in the "unarrest" documentation policy. In this case, an individual was detained as a possible suspect in a crime at a nearby bank. The information at the scene was somewhat confusing, as a radio transmission initially confirmed that the detained individual was

the suspect. However, a bank employee was transported to the scene and announced that the detainee was not the suspect. Despite the negative ID, the individual who was detained was identified as a “suspect” in the incident report. OPA recommended that the Department review reports to ensure this was an isolated incident.

**Identification of Officers in Specialty Unit Vehicles.** On several occasions, circumstances precluded OPA-IS investigators from identifying officers in vehicles assigned to specialty units such as Accident Investigation or Training. Since these vehicles are not part of the general use fleet, there is generally no record of who checked them out at any given time. OPA made a recommendation that, where practicable, procedures be adopted at precincts and specialty units that enable the Department to determine who was in what car when. OPA referred the matter to Audits and Inspections as an accountability, audit, and possibly safety, issue.

**Request for Medical Assistance.** The OPA reviewed an investigation involving a subject who was arrested on a drug charge following a short pursuit on foot. Force was used in the arrest, and the subject immediately complained of pain and difficulty breathing. The arresting officers reported the force and the complaint of injury to their supervisor. However, the subject’s complaint of breathing difficulty was discounted because he was able to talk. These facts should have prompted a request for medical assistance. OPA brought these facts to the attention of the Operations Bureau and recommended that the commanders review the issue with operations personnel.

**Off-Duty Employment Policy.** Several OPA cases highlighted problems with interpretation of the language in the SPD manual governing off-duty employment in two main areas: what employment was prohibited, and procedures for approval by supervisors. A recommendation was approved to analyze and improve the manual provision.

**E-Mail Policy Reminder.** In review of an investigation into inappropriate use of department equipment by sending inappropriate e-mails, it was discovered that department employees who received the inappropriate e-mails took no action. OPA worked with Human Resources to draft a memorandum to Department employees reminding them of their options and possible obligations as recipients of such inappropriate e-mails.

## Special Policy Recommendations

OPA initiated special policy recommendations in three topical and important areas: response to complaints of racially biased policing; risk management; and officer-involved domestic violence. A discussion of these initiatives is set forth below.

**Biased Policing.** In June 2003, the OPA published a report on Seattle’s Response to Concerns about Racially Biased Policing. The report contains information collected by the OPA during 2001 and 2002 about citizen allegations of biased policing. Also included is an update on OPA and Department efforts to address biased policing, and recommendations to improve both the OPA and the Department response. To read the report, visit: <http://www.seattle.gov/police/OPA/Docs/BiasedPolicing.pdf>, or contact the OPA.

**Risk Management.** With direction from Chief Kerlikowske, the OPA researched and provided recommendations for the creation of a department-wide risk management team to review and evaluate the full range of risk management issues faced by law enforcement agencies.

Consistent with the best practices of other agencies, the Chief created a high-level, cross-organizational team authorized to recommend and make prompt adjustments to operations, training, policies, and procedures. A comprehensive risk management team can improve officer safety, and police-community relations, and reduce liability.

The team’s primary function and responsibility is to systematically review trends in all relevant categories, such as lawsuits, citizen complaints, criminal investigations, EEO investigations and issues, use of force, accidents, on-duty injuries, overtime and off-duty work, citation and arrest data, etc. Staff to the team coordinates management reports as a method to spot and solve possible problems, and to identify both favorable and unfavorable trends in a timely manner.

In addition to the regular review of the above areas, the team is creating and prioritizing a list of additional issues for specific review or audit.



The Risk Management Advisory Team consists of the following permanent members: OPA Director; Assistant Chief of the Employee/Community Support Bureau; Training Commander; Audits and Inspections Commander; Human Resources Director; Department Legal Advisors. The OPA Associate Director and HR Risk Manager staff the team.

As the Team reports directly to the Chief of Police, it will have the support and authority necessary to making improvements or changes recommended.

**Focus on Officer-Involved Domestic Violence.** The tragic April 2003 shooting of Crystal Brame by her husband, Chief David Brame of the Tacoma Police, put the spotlight on the issue of officer-involved domestic violence. Domestic violence is insidious, and often aggressively hidden from the public eye, so no law enforcement agency can safely say, “It can’t happen here.”

But, should any report or allegation of domestic violence by a Department employee surface, SPD has the structure, policies, and accountability mechanisms in place to respond.

First, SPD has an internal policy governing procedures to be followed if an officer responds to a domestic violence call involving a department employee. The procedure includes requirements for response to the scene by a Lieutenant or above, contact with a Domestic Violence advocate and OPA notification.<sup>4</sup>

Further, the OPA has an internal policy governing the investigative response to criminal allegations both within and outside of the city limits. Upon receipt of information or an allegation that an employee has been involved in domestic violence, the OPA-IS Commander opens an investigation file. If the alleged offense was within the city limits, OPA-IS leads the investigation, with assistance from the Department’s Domestic Violence unit. If the alleged offense occurred outside the city limits, an OPA-IS investigator works as a liaison with the investigating agency, monitoring and assisting with their investigation. In either case, immediately after learning of the allegation, the OPA-IS commander convenes a meeting with the OPA Director, the employee’s chain of command, and the Human Resources Director. The purpose of the meeting is to discuss whether the employee needs to be reassigned or relieved of duty and if their badge and gun need to be removed during the investigation.

Moreover, Seattle’s multi-tiered civilian oversight structure serves as a comprehensive check against neglect, mismanagement, or cover-up of complaints against officers alleging DV. Consider the following procedural safeguards:

- Sequential documentation of ALL incoming complaints, regardless of classification;
- Review of all new complaints and their recommended classification by civilian director and independent auditor;
- Civilian director has authority to direct classification; auditor has advisory power;
- Civilian director reports directly to Chief but, via ordinance, also has reporting obligation to Mayor and City Council;
- Civilian director is appointed by Mayor and confirmed by Council for three-year term (during term, can only be removed by majority of Council for cause – providing some political insulation);
- Internal policy provides that civilian director can report directly to the Deputy Mayor regarding complaints against the Chief of Police;
- OPA policy on criminal investigations provides for OPA to lead the investigation if alleged crime occurred within jurisdiction (OPA may solicit assistance from a detective or sergeant within the DV unit); if alleged crime occurs outside Seattle’s jurisdiction, OPA assigns a liaison with the outside jurisdiction and monitors the investigation (no opportunity for employee’s chain of command to try to influence outcome);
- Above policy on criminal investigations also requires review of allegation and investigation by appropriate prosecuting entity;

<sup>4</sup>Additional relevant SPD policies include (1) the soon-to-be-implemented due diligence program, which checks for arrest and criminal history, and for any Domestic Violence-related court orders of existing employees at least every four years; (2) the policy requiring employees to self-report if they are the subject of a criminal investigation, are arrested, or are the subject of any Domestic Violence-related court orders; and Human Resources policies and programs providing assistance and counseling services to employees experiencing emotional problems.

- OPA policy also requires that, immediately upon receipt of information or allegations of domestic violence by an officer, the OPA-IS commander convene a meeting to consider the available information and decide whether to relieve the officer of duty and take the officer's gun and badge; meeting includes the OPA Director and Commander, the named employee's Captain, Bureau Chief, Chief and representatives from Human Resources, including the Wellness Lieutenant;
- Civilian director may direct and civilian auditor may advise on the scope and course of ongoing investigations;
- Civilian director may direct and civilian auditor may advise additional or further investigation; if OPA refuses additional investigation advised by the auditor, the three-member civilian OPA Review Board may resolve the dispute regarding the investigation;
- Civilian director reviews all completed investigations and certifies the completion and findings;
- Civilian director determines final disposition of all complaints other than sustained complaints;
- Chief of Police has final authority over whether to accept a sustained recommendation, but civilian director publicly reports when the Chief does not accept a sustained recommendation;
- Chief of Police has final authority on the imposition of discipline;
- OPA closed cases are reported publicly each month;
- OPA publishes reports semi-annually;
- Three-member OPA Review Board may review redacted closed OPA cases, and report publicly on work of the OPA within SPD;

Gathering evidence on domestic violence allegations and substantiating them will still prove challenging. But, Seattle is well-positioned to address the serious problem of officer-involved domestic violence.



# Building Trust



## BUILDING TRUST

### Outreach to the Community

Experts on citizen oversight and police accountability have noted that one clear benefit that can be claimed for citizen review, as opposed to purely internal complaint review processes, is that they make the complaint process more visible, often more accessible, and perhaps more legitimate.

The OPA continues to provide information to the community about the office. In addition, the OPA is also a beneficiary of the outreach efforts of the OPA Review Board, and of public and media attention to all three arms of the Office of Professional Accountability.

For 2002 and into 2003, the OPA directed additional outreach efforts toward youth and citizens with limited English proficiency.

**Citizens with Limited English Proficiency.** Currently, the Investigation Section of the OPA is able to accommodate persons with limited English proficiency by utilizing both second-language skills of Department employees and the AT&T language line. If a citizen complainant or witness professes limited English proficiency, or if the limitation is apparent to the OPA-IS investigator, the citizen will be offered one of these services. In the past, a Spanish-speaking citizen, a Chinese-speaking citizen, and a citizen with a hearing and speech impairment have been provided services to ensure their full participation in the complaint investigation process.

The OPA also conducts an outreach program to reach citizens with limited English proficiency (LEP). OPA brochures are currently distributed through all department precincts, neighborhood service centers, and civil rights organizations. In addition, the OPA meets regularly with the Department's racial and ethnic advisory groups, holds community forums in neighborhoods with significant numbers of LEP citizens, and maintains a website with a complaint form that is easily accessible from both the City's and Department's home page. Finally, the OPA is featured in TV segments in the "Cops, Culture and Conversations" video series that has aired on local television. The first video was aimed at a Spanish-speaking audience. Upcoming segments are directed toward the East African and Asian communities.

To increase awareness and improve access of citizens with limited English proficiency to the OPA, the Office is producing an insert to the brochure in the form of a bookmark. The bookmark has simple, direct instructions in several languages on how to complain about police misconduct.

Distribution of the new bookmarks will include targeted outreach to service providers in communities with high concentrations of citizens with limited English proficiency. OPA will give these providers the training and resources they need to assist their clients with police-related concerns.

**Outreach to Youth.** The OPA has noted in a previous report that there is reason to believe that youth who have contact with police are underrepresented as a group of complainants. Thus, the OPA has increased its targeted outreach to this special community.

First, the OPA Director serves as the command staff liaison to the newly formed Youth Advisory Council, comprised of about 15 students ranging in age from 14 to 19. The Youth Advisory Council is expected to serve as a conduit for information to and feedback from area youth. The Director has worked with the Council on preparing a survey instrument assessing youth attitudes about police. The Youth Advisory Council intends to use information from the survey in a project aimed at promoting better understanding and mutual respect between Seattle's youth and police officers.

In addition, the OPA has met with the Seattle School District's Director of High Schools and Director of Alternative High Schools to discuss the importance of informing the city's high school students about the existence and purpose of the OPA. The OPA is working with the District to coordinate presentations about the OPA at area high schools.

## Other OPA outreach

**Brochure distribution.** OPA continues to maintain an active brochure distribution network. Supplies of OPA brochures are regularly provided to 37 sites, including: government offices and police precincts, thirteen neighborhood service centers, human rights offices, the Urban League, El Centro de la Raza, the Seattle Indian Center, Harborview Hospital, Asian Legal Service, ACLU, Seattle Public Library, OPA Review Board, and the Citizen's Service Bureau.

**OPA Presentations and Forums.** The OPA continues to be a frequent speaker to area councils and groups. Since last year's report, the OPA has presented to the African American Advisory Council, the National Association for the Advancement of Colored People, the League of Women Voters' Forum; Amnesty International's Seattle chapter; the Seattle University's Access to Justice program; the National Crime Prevention Council's Summit on Culture and Law Enforcement; the Native American Advisory Council; the American Civil Liberties Union; the Seattle Race Conference; the Community Police Academy; and the East Precinct Forum at the Miller Community Center.

In addition, the OPA Director has presented or participated in local, regional, and national conferences about citizen oversight in general, and Seattle's citizen oversight system in particular.

In September 2002, the OPA Director was invited to participate in a working conference of California and Northwest oversight professionals held by the Police Assessment Resource Center, a non-profit foundation headed by Merrick Bobb, an attorney who also serves as Special Counsel appointed to monitor compliance with the consent decree imposed on the Los Angeles Police Department. The OPA also presented by invitation at the annual conference of the National Association of Citizen Oversight of Law Enforcement (NACOLE) in Boston in November 2002. Similarly, the Director was invited to attend a meeting of police auditors convened in Omaha as part of the Department of Justice's Police Professionalism Initiative (March 2003).

The OPA has also made presentations to a King County roundtable on civilian oversight (November 2002), the Seattle University Law School "Choices" Conference (March 2003), to the Olympia Police Auditor; and to the Tacoma "Crystal Clear Initiative" Task Force focusing on reforms in the prevention of and response to officer-involved domestic violence (August 2003).

Addressing the role of citizen oversight in nationwide reforms aimed at preventing the conviction of innocents, the OPA Director has also presented at the American Judicature Society's National Conference on Preventing the Conviction of Innocent Persons in Alexandria (January 2003), the Washington State Appellate Judges Conference in Leavenworth (April 2003), and the annual conference of the Washington State Criminal Justice Institute (September 2003).

Finally, the OPA sponsored a community forum at North Seattle Community College on May 22. Approximately 25 citizens attended the forum. Discussion topics included investigative or "Terry" stops by the police; SPD policies on canines; demonstration management; racial profiling; community attitudes about the police; and the OPA process.

**Media and Website Outreach.** Local print, radio and TV news organizations continue to report on OPA activities. Local newspapers, including the Seattle Times, Seattle Post Intelligencer, the Skanner, the Stranger, and the Seattle Weekly have published about forty articles covering the OPA since the last report. (See sample news clippings at right.) In addition, TV or radio news reports have covered OPA activities approximately a dozen times.

The OPA website remains a productive source of feedback from citizens. Citizens have used the OPA website and e-mail to make comments, complaints, inquiries, and/or commendations 239 times since July of 2002.

# The Seattle Times

## 1 Complaint of Police Bias Sustained in 2001, 2002

By Florange Davis  
Seattle Times staff reporter

The one sustained allegation of biased policing in the Seattle Police Department in the last two years was not about race or ethnicity, but about sexual orientation.

The complaint, one of 164 allegations of biased policing filed by the public against police officers in 2001 and 2002, stemmed from a derogatory remark made by an officer transporting a man to jail after an alleged sexual offense, said Sam Paica, director of the department's Office of Professional

Most complaints, though, were not related to a traffic stop. They included the degree of force allegedly used by an officer because of the complainant's race; an Asian man contending he was singled out as police enforced ticket-scraping laws; and a Pakistani man who said police were biased against him after the attacks of Sept. 11, 2001.

Some citizens, though, alleged that race was an advantage. Five grievances were filed by people complaining that the Police Department favored blacks — ignoring an inci-

## THE NEWS T

### BEYOND BRAME: Moving forward after the David Brame scandal

In Boise, a series of police-involved shootings raised public ire. In Portland, the mayor asked for changes after a downtown riot where citizens claimed law enforcement was heavy-handed. In Seattle, there were allegations that a homicide detective had taken money from a crime scene.

In each city, public and political concern about police conduct led to the creation of a civilian-driven police oversight system. The three systems are drastically different, but they have at least one element in common: Civilians review how the police handle investigations of their own officers.

In Tacoma, there's no such oversight. No civilians are involved in the handling of complaints against officers. Although the entire police department recently was audited, no independent auditor performs regular checks and analyses of how such complaints are handled.

In light of the David Brame scandal, members of the Crystal Clear Committee are learning about the Boise, Portland and Seattle civilian oversight systems at a meeting today.

"Chief (Don) Ramsdell wants us to have the best policy and most unbiased policy for victims and for officers," said Tacoma police Lt. Tom Strickland, a member of the Crystal Clear Committee. "We're going to look at everything."

Tacoma Police Chief David Brame shot and killed his wife, Crystal, and himself on April 26. After the shootings, a past rape allegation against Brame became public, as did Crystal Brame's allegations that her husband had systematically threatened and abused her.

Whether oversight systems like ones in Portland, Seattle and Boise would have made a difference if Crystal Brame is impossible to say. But they're worth investigating, Strickland said.

The Crystal Clear Committee group of community member local politicians researching changes the city, the police department and the community can in the wake of the Brame shooting said Ramsdell will set any new department but that the research and ideas initiated by the Crystal Clear committee have been invaluable.

The oversight systems in cities studied are different but a true ombudsman, who recently released a scathing report about the city's chief of police, Portland has an independent oversight department in auditor's office. Seattle has an independent oversight department, police Lt. Affairs department, plaintiff auditor and a board.

In interviews with reporters from all three oversight systems this week, new become clear:

- \* Oversight dispute created with the intent not only to protect plain about police, officers themselves used system can be

- \* Civilian oversight, even, are not as possible as a post Seattle's auditor

five deputy police law, B. Los Angeles who has investigated

were 10 involving an Asian black, alleging that they stopped by Seattle police because of their race. Six complaints were filed by one driver, an Arab-American Asian driver, a Middle-East Asian driver with a black passenger young male driver with his Nine people alleged being on the street by officers because of race or ethnicity.

## Protesters criticize Seattle police

Seattle Times staff reporter

While dozens of protesters complained yesterday that Seattle police have been heavy-handed, and at times brutal, during recent anti-war protests, a police spokesman said the department felt compelled to act in the name of public safety.

About 100 people nearly filled the Seattle City Council chambers while Councilman Nick Livata, chairman of the Neighborhoods, Arts and Civil Rights Committee, fielded allegations that police behavior, particularly Saturday, infringed on demonstrators' rights to be heard.

"We need to get the police to understand that there's a problem here," Livata said at one point, "and one of the things we're hearing is that there is no problem."

Seattle police declined a request to have a representative at the meeting, and Police Chief Gil Kerlikowske was tied up in meetings, said Duane Fish, a police spokesman.

Fish said the department wants to let protesters express themselves but has to make certain decisions, including crowd-control measures and arrests, in the name of public safety. He said that was the case Saturday, when a march began without a permit and organizers had threatened disruptions that police worried could lead to the kind of mayhem seen during the 1999 WTO protests.

"The bottom line to all of this is the department very much supports everybody's right to free speech, to get the message out that you agree or do not agree to a particular subject," Fish said. "However, we will do everything we can within our resources to prevent the minority type of demonstrations that occurred during WTO. The potential is there, especially with something as flammable as the topic of war."

Peace-group representatives complained to Livata that they have tried to work with police to coordinate activities at the Henry M. Jackson Federal Building, where they have been protesting for six days now, only to see police change their plans.

The police presence was a fairly large deterrent to protesters.

Tina G. Young, 80, of Everett told of being dragged to the ground, and he had bloody sores on his head yesterday from the incident. "I think they treated me barbarically," Young said of police.

Young said he was arrested after an officer told him to get up on the sidewalk and he responded, twice, "Say 'please.'" He was charged with obstruction, pedestrian interference and assault.

A Seattle Times reporter saw several protesters struck by police swinging batons.

Zack Seymour, 27, of Shelton said he felt police overreacted. "The police told us we could walk on the sidewalks, but then they blocked the sidewalks and then they blocked the sidewalks and then they blocked the sidewalks," Seymour said. "It's almost like we were being put in a situation where confrontation was more likely to happen."

Fish, the Police Department spokesman, said Lt. Steve Witke was encouraging a member of Not In Our Name, the organizer of Saturday's activities, to agree on a parade route and get a permit up to an hour before the march began. The group refused, Fish said.

Witke then said the march would be illegal, and marchers were told they would have to stay on sidewalks.

Most did, prompting one woman yesterday to note that only in

Seattle can you have a march where people even wait at the crosswalks. But police feared the protesters would scatter, said Fish, stretching police resources to where officers were outnumbered and outflanked.

So hundreds of police surrounded 800 to 1,000 protesters. First on First Avenue west of the Federal Building, then later in Pioneer Square, where they were finally allowed to leave two at a time.

Whether the protesters were wrong or the police were wrong, the protesters' representatives said they were disappointed.

While some complaints are a large part of the job, the Portland office would prefer to be "preventive rather than punitive," she said.

Analyst and other working to investigate misconduct happens prevented, after hiring and training means, she

It's system grew attraction with a board. Attendance of leads the Professional operates as an

complaints of (investigational) Involvement. Issues all and of, the

## Seattle Post-Intelligencer Review of brutality complaint against police begins

SEATTLE POST-INTELLIGENCER

It could be up to a month before officials with the Seattle Police Department's Office of Professional Accountability complete a review of a complaint by two women that a pair of off-duty officers roughed them up.

"We have a complaint and it is currently being investigated on a relatively fast track," Sam Paica, director of the office, said yesterday about the complaint, made Sept. 9.

The women said that on Sept. 8, they entered a Seattle nightclub where the off-duty officers were providing security and that the officers treated them roughly and were rude, according to Paica. The officers, though off-duty at the time, are held to the same standard of conduct as any on-duty officer, Paica said, which is why her office is investigating.

There are pressures for the ongoing issue of police accountability," Paica said, "but I think there are steady steps that have proven success in holding officers accountable and improving public trust."

## OPA in the News

The OPA, which is part of the Police Department and is led by Paica, a civilian, is charged with reporting on the department's response to biased policing. The OPA reviews all complaints of police misconduct.

Seattle Times  
8/11/2003

"We have a complaint and it is currently being investigated on a relatively fast track," Sam Paica, director of the office, said yesterday about the complaint, made Sept. 9. The officers, though off-duty at the time, are held to the same standard of conduct as any on-duty officer, Paica said, which is why her office is investigating.

Seattle Post Intelligencer  
9/21/2002

## Outreach to Department Employees

Information about complaint statistics has been directed in the past primarily to an external audience. It is critically important to give timely and substantive information about police accountability to the community.

It is time, however, to step up efforts to communicate directly with employees about the citizen complaint process. As in any large organization, it can be difficult to ensure that accurate information is shared with all employees in a timely manner. The inherent bureaucratic impediments are compounded where some information is considered sensitive and private. In this environment, misinformation and rumors proliferate, and respect for the process may be compromised.

Moreover, though the public should know that the OPA is actively involved in system reform and improvement, many of the reforms instituted or being developed by the OPA most directly affect Department employees. The pace of change over the past year has been fast, spurring a need to pull all relevant information together in one place.

The OPA has been working this past year to share more information with commanders and managers within the Department. The changes in supervisory referrals, administrative review procedures, and meetings with captains are examples of these efforts.

To reach officers directly, though, the OPA is producing a presentation to be given at all precinct roll calls. The presentation covers important information about the OPA, statistics on complaint investigation and discipline, and policy and procedure changes that impact officers. The presentation will be tied together into a report late fall or early winter.

## Improving the Experience of Participants in the Complaint Review Process

Encouraging and maintaining public trust in the character and motives of the police is an important way of ensuring that citizens want to abide by the law and want to cooperate with the police.

A key to developing trust is to treat participants in the complaint process fairly and with respect. Complainants who perceive their treatment as fair and respectful are more likely to view the entire law enforcement system as legitimate, and worthy of reciprocal respect.

In turn, police officers must also feel that the complaint review and disciplinary system treats them fairly and with respect. This is not merely an empty, feel good measure. Rather it is about creating a climate of respect for the rules the system seeks to enforce. Police officers who feel the system is harsh, arbitrary or unfair are less likely to embrace the rules that govern their conduct.

Professor Livingston identifies three ways an agency can demonstrate that it cares for the experiences of the participants in the complaint review process: (1) make sure complainants understand that their side of the story is being heard; (2) afford both police and complainants timely resolution of their complaints; and (3) offer alternatives for complaints badly suited to an investigative paradigm.

**Improving communication with complainants and employees.** Since its inception, the OPA has placed a high priority on communicating with all parties to a complaint investigation. The emphasis remains, even while challenges persist. This year, the OPA has taken the following additional steps:

**Standardized intake procedures.** Procedures designed to ensure better communication with complainants at intake about what they can expect, even if their complaint is not assigned for investigation, were introduced. New Preliminary Investigation Report forms document the steps taken to advise complainants of the process and the possible outcomes. Even if the response is less than anticipated, it is important to be candid about the limitations of the fact-finding process. In addition, complainants are advised that even if their complaint is not substantiated, they have made a record that in itself is valuable in improving policing and police-community relations. The OPA Investigation Section does excellent work providing this information to citizens.



**Sunset letters.** OPA-IS investigators make several attempts to contact complainants and witnesses using the best available contact information. Faced with repeated failure to respond, investigators send a sunset letter (or e-mail, or phone call) stating that if they have not heard from the addressee by a certain date, the investigation will proceed without their input. A recommendation was made to list prior attempts at contact in the body of the sunset letter, and also to include a strong and specific statement regarding the effect of failure to respond, or to produce promised witnesses or evidence. With this improvement, the sunset letters give a clear message to the complainant or witness, and also document the substantial efforts made at contact.

**Notification to officers.** In discussions with Department sergeants, it was pointed out that at the conclusion of an investigation, complainants receive more information about the finding and its rationale than do the named employees. The OPA instituted a practice calling for the case investigator to contact the named employee upon completion of a case that is not-sustained and provide more detailed information about the evidence and analysis that supported the finding in the case.

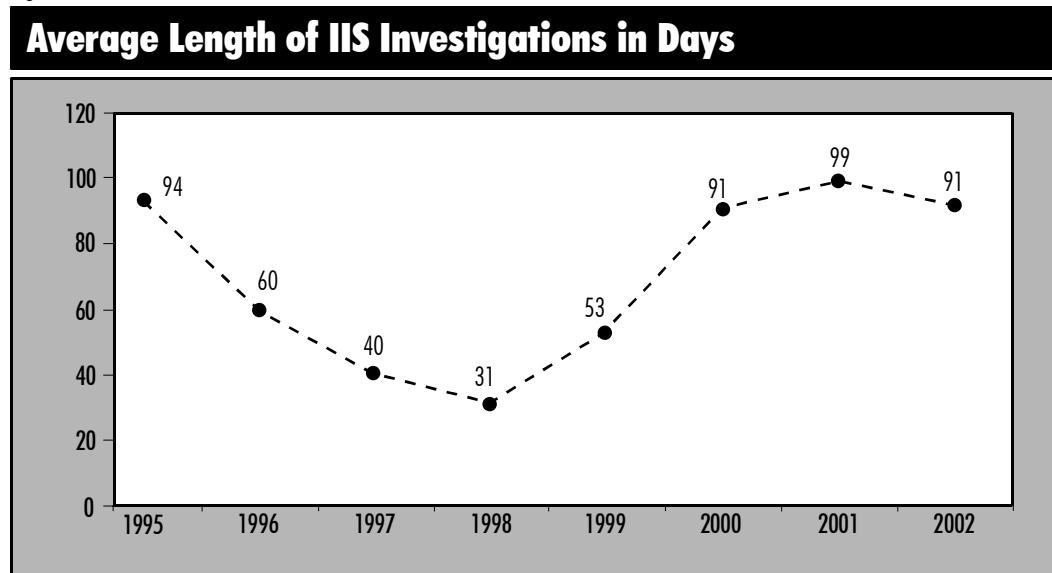
**Quality assurance surveys.** At the conclusion of each investigation, both complainants and employees are given a form that can be used to share information about their experience in the complaint process. In addition to information they may yield, the surveys also serve to convey to the participants that the OPA is actively looking for ways to make a difficult process somewhat easier. The surveys are completely anonymous, and are provided in a self-addressed, stamped format to increase the response rate.

## Timely Resolution of Complaints

Last year, the OPA reported an increase in the average length of time it took for an OPA-IS investigation, from 91 days in 2000 to 99 days in 2001. The increase was understandable given the dramatic changes in investigative procedure that took effect in 2001 with the term of the new collective bargaining agreement between the City and the Seattle Police Officers' Guild, and the implementation of the OPA.

For 2002, the OPA is pleased to report an 8% decrease from the 2001 high, down to 91 days. The decrease was achieved without additional staffing, even while the Investigation Section handled several complex investigations.

Figure O:



Seattle Police Department, 1995 - 2002

Improvements are necessary, however, in one category related to the length of the investigation. The terms of the collective bargaining agreement between the City and the Guild require that investigations be completed within a 180-day time period. The 180 days covers the time between notice to the member of the allegation and notice of the intended imposition of discipline, if any.

As of July 2003, the OPA Director had received twenty-seven 2002 cases after the 180-day deadline had expired. An additional eleven were received within one week of the deadline.

Most of the delays can be attributed to a period following the promotion of its previous captain in which the Investigation Section was operating without a captain. Moreover, the late cases had been previously determined by the Investigation Section to have a very low probability of being sustained.

Still, the OPA legislation contemplates review and certification of findings by the OPA Director of all completed cases. This review cannot be meaningfully conducted if the 180-day deadline has passed, leaving no opportunity for a change in finding and the imposition of any corrective action. The current section commander is correcting this problem.

### **Mediation.**

The OPA remains deeply interested and committed to instituting a voluntary mediation program. After reviewing hundreds of complaints over the last two and a half years, the OPA is convinced that a significant portion of them would have been ideally suited to a mediation process, and that, in fact, mediation would produce a more satisfactory outcome for complainants and officers alike.

Unfortunately, however, the City and the Seattle Police Officers' Guild have not yet reached agreement on mediation. The OPA continues to urge that the negotiation of a mediation program be given the highest priority by the City and the Guild.

### **Transparency**

Openness promotes public trust. Even though Seattle's citizen complaint investigation function is internal to the police department, important steps have been taken to ensure that complainants and the public have access to the information necessary to permit an assessment of the quality, efficacy, and fairness of complaint investigation.

First, complainants are entitled to copies of their own statements. They are also entitled to see the public reports that relate to their incident, such as copies of citation, incident, or arrest reports.

Second, complainants are given information throughout the complaint review process. At the time of intake, they are notified as to the likely classification of their complaint, and advised that the OPA-IS chain of command and the OPA Director review the proposed classification. If their complaint is assigned for supervisory referral, line investigation, or OPA-IS investigation, they receive a copy of the OPA brochure, a letter notifying them of the number assigned to their investigation, and the name and contact information for the assigned investigator. Complainants also receive periodic status reports during the pendency of the investigation. Finally, at the conclusion of the investigation, complainants are sent closing letters that describe the investigation, relate the finding, and explain the reason for the finding. Through these efforts, the process is more open and thus more widely perceived as fair by complainants.

Third, the OPA reports to Mayor Nickels each month on all cases closed that month. The monthly reports include a summary of the allegation and an explanation of the finding. Included in the monthly reports are statistics on complaints received that month. To view the reports, visit:

<http://www.seattle.gov/mayor/issues/OPA.htm>.

Finally, the OPA publishes, per ordinance, public reports providing detailed information about all aspects of the citizen complaint process. The recent OPA report on Seattle's Response to Concerns about Racially Biased Policing is available at: <http://www.seattle.gov/police/OPA/Docs/BiasedPolicing.pdf>

Copies of previous OPA reports, as well as reports of the OPA Auditor and Review Board, can also be accessed via the OPA website.



# **Providing a Fresh Perspective**



## Providing a Fresh Perspective

A primary reason for the creation of the OPA Director position was to ensure that a person who was not a trained, sworn police officer would be included in the review of investigations of citizen complaints of police misconduct. The legislation called for a civilian with substantial legal and/or investigative experience – who could look at situations and evidence with a different set of eyes. And, for the first time, the review was to be in real time, not after the fact, so that it could make a difference in the outcome of actual cases.

But the responsibility to review complaints and recommend findings and discipline wisely does not rest with the OPA Director alone. Instead, other commanders in the Department share the responsibility. The process used by the Department to evaluate cases is as follows.

## Department Process for Evaluation of Cases

When OPA-IS investigators have completed the fact-finding portion of the investigation, the complete investigative file is provided to the OPA-IS lieutenant. The lieutenant reviews the case for thoroughness and objectivity, and may either return it to the investigator for additional investigation, or forward it to the OPA-IS captain. When the investigation is deemed complete, an unredacted summary<sup>5</sup> of the file is sent to the OPA Auditor. The Auditor may request additional investigation.

The OPA-IS captain reviews the entire case and analyzes the evidence. The captain prepares a memorandum stating his or her recommendation for finding, along with supporting evidence and analysis. The OPA-IS Recommended Disposition is forwarded to the named employee's chain of command and the OPA Director. If the OPA-IS captain recommended a "sustained" finding, a copy of the complete file is also sent to the Department's Human Resources Legal Advisor and to the Chief of Police.

If there is disagreement between the reviewing parties as to the proper finding, the parties will meet and discuss the issue. The OPA Director makes the final determination of findings other than sustained.<sup>6</sup> If either the chain of command or the OPA Director continues to recommend a sustained finding, a meeting to discuss the case is scheduled. Present at the meeting are the Chief of Police, the bureau chief and captain of the named employee, the OPA Director, OPA-IS Captain, and the legal advisor. The attendees each present their view of the evidence and the appropriate finding. The bureau chief and captain will also share the opinion of the named employee's supervisor about the case. If a sustained finding is still contemplated, the next step is for each attendee to share their opinion about the range of appropriate discipline.

The SMC 3.28.810 charges the OPA with providing analysis to the Chief of Police to promote consistency in discipline. One of the key considerations in determining appropriate and consistent discipline is the level of discipline imposed in the past for similar offenses. The Department's Human Resources Department maintains records of past discipline to permit comparison and application to current cases.<sup>7</sup>

As set forth in the OPA ordinance, SMC 3.28.700 et seq., the Chief of Police retains authority to impose the final finding and discipline. Chief Kerlikowske sometimes announces his proposed finding and discipline at the conclusion of the meeting; at other times he will take additional time to review and consider his decision. In all cases where the Chief proposes discipline, the employee and his or her union representative is notified in writing of the finding and the proposed discipline.

<sup>5</sup> The Auditor may review the entire file upon request.

<sup>6</sup> A discussion of how the Director evaluates cases is at "OPA Evaluation of Cases" in this Section of the Report.

<sup>7</sup> While authorized to make recommendations about a reasonable range of discipline for a given violation, the OPA's primary concern is simply that serious violations are treated as such, and that appropriate remedial action is taken in the majority of cases that involve minor misconduct. These are the broad principles that advance accountability within an organization. As stated in previous reports and elsewhere in this one, it is hoped that soon a significant number of cases involving minor misconduct may be resolved through mediation, outside of the disciplinary system.

Federal and state law requires that public employees be given notice and an opportunity to be heard by the hiring authority before discipline may be imposed. To comply with this requirement, a meeting is arranged between the Chief, the named employee, and the employee's representative prior to the imposition of discipline. This meeting is known as a Loudermill hearing, from the name of the United States Supreme Court decision establishing this due process protection. At the meeting, the employee and his or her representative may present their position as to why the finding and/or discipline ought to be changed. Following the Loudermill hearing, the Chief issues the final determination of finding and discipline.

The process outlined above ensures the rigorous and multi-dimensional review critical to both fairness and accountability. The classification and disposition activity of the OPA, noted in more detail below, is evidence that the OPA within the Department is not a system of perfunctory review and rubber-stamping. Rather, the data reflects the energetic review, debate, and tough decision-making that are intentional features of the process. That there is frequent disagreement between the OPA Director and the sworn chain of command is not a discredit to the Department, nor evidence of a wide disconnect. On the contrary, the data is testament to a system that is working as it was intended. Moreover, public reports such as these ensure in turn that the process itself is subject to scrutiny.

Few other police departments in the country have accepted such direct involvement of a civilian in their internal investigation function, and both the City and Department deserve recognition for their innovation and cooperative attitude.

#### **OPA Classification and Disposition Activity**

For the year 2002, all 866 complaints received were reviewed for classification. Of 293 assigned for supervisory referral, line or OPA investigation, 280 have been reviewed and closed. Specific actions taken by the OPA Director are noted below.

**Reclassification of Complaints.** The OPA Director re-classified 12 contact logs to either an SR, LI, or OPA-IS investigation. In addition, the OPA reclassified several proposed investigations.

**Additional Investigation.** The OPA Director made additional inquiries or directed additional investigation in approximately 14 cases.

**Changed OPA-IS Finding – Neither Finding Sustained.** The OPA Director changed a recommended finding of “exonerated,” “unfounded,” or “not sustained,” to a different, but still unsustained finding, in twenty-three 2002 cases.

**Changed OPA-IS Recommendation of “Sustained” to Other Finding.** In ten 2002 cases, the OPA Director recommended a different finding after receiving a recommendation of sustained from OPA-IS. Five were changed to SRs, and the remaining five were changed as follows:

- Allegation of failure to cooperate: *Citing procedural problems that affected the employee's due process rights, OPA Director changed OPA-IS sustained recommendation to not-sustained.*
- Allegation of failure to cooperate: *Finding that the burden of proof had not been met, OPA Director changed OPA-IS sustained recommendation to not-sustained.*
- Allegation of violation of rules/regulations/laws: *Due to concerns about unreliable records, OPA Director changed OPA-IS sustained recommendation to not-sustained.*
- Allegation of failure to report use of force: *As it was unclear whether the SPD manual required a report for the type of force used, and since the officer's chain of command advised that no report was required, OPA Director changed OPA-IS sustained recommendation to exonerated.*
- Allegation of improper search: *Agreeing with chain of command that no policy violation had occurred, OPA Director changed OPA-IS sustained recommendation to exonerated.*

**OPA “Sustained” – Chief Changed Finding.** In eleven 2002 cases, Chief Kerlikowske did not accept the OPA's recommendation for a sustained finding. His changes were as follows:

- Allegation of a derogatory remark: *Chief changed OPA sustained finding to a Supervisory Referral.*

- Allegation of Failure to Identify: *Chief changed OPA sustained finding to not-sustained.*
- Allegation of two separate counts of workplace harassment: *Chief accepted one OPA sustained finding, but changed the second OPA sustained finding to not-sustained.*
- Allegation of unnecessary force and failure to report use of force: *Chief changed OPA sustained findings to exonerated after Loudermill hearing.*
- Allegation of excessive force: *Chief changed OPA sustained finding to not sustained. Case had previously expired, and no discipline could be imposed.*
- Allegation of conduct unbecoming by officer, and failure to take appropriate action to report the misconduct by a sergeant. *Chief accepted the OPA sustained finding on the officer, but changed the OPA sustained finding on the sergeant to a Supervisory Referral.*
- Allegation of unnecessary force: *Chief changed OPA sustained finding to exonerated after Loudermill hearing.*
- Allegation of unnecessary force and profanity: *Chief changed the OPA sustained finding of unnecessary force to not-sustained, and changed the sustained finding of conduct unbecoming to exonerated.*
- Allegation of misuse of authority and violation of rules by officer in investigation: *Chief changed OPA sustained findings on misuse of authority and violation of rules to a sustained finding on conduct unbecoming.*
- Allegation of violation of rules/regulations/laws: *Chief changed OPA sustained finding to not-sustained after Loudermill hearing.*
- Allegation of misuse of authority, unnecessary force, and failure to report use of force : *Chief changed OPA sustained findings on force and failure to report use of force to not-sustained, and also changed sustained finding on misuse of authority to not-sustained after Loudermill hearing.*

**OPA referred two cases of false complaints.** Two OPA-IS complaint investigations were referred to the City Attorney for consideration of charges for making a false report of officer misconduct.

## OPA Evaluation of Cases

It is clear from both the number of complaints and the level of scrutiny they receive that the review of individual citizen complaint investigations constitutes a significant portion of the OPA Director's duties. The time spent is warranted because complaints of misconduct can have serious implications for citizens, officers, and the confidence of the public in its department.

It is important, then, to go beyond the numbers and share a sense of the what and the how. What does the OPA look at and consider in making or recommending findings? How does the OPA determine that the complaint was thorough, fair, and objective? Below is a description of the general process used and standards applied.

Every completed investigation comes to the Director with the following components pertinent to this discussion:

- **Intake information.** This includes documentation of how and when the complaint was received, and what the complainant actually alleged.
- **Notification form.** This is the official form that notifies the named employee of the allegations being investigated. The allegations correspond to sections of the SPD manual, and the manual sections set the standards against which the conduct is judged.
- **Exhibits.** These include all documents associated with the incident, such as citations, arrest, incident, or use of force reports, radio transmissions, 911 tapes, transport, jail, or hospital records, and any video or photographs. Investigators may also generate exhibits to help make sense of the evidence, e.g., photographs of the scene, time lines, weather charts, vehicle or equipment characteristics, or graphs, etc.
- **Transcripts.** All interviews with complainants, named employees, and employee and civilian witnesses are tape-recorded and transcribed.
- **Investigator's Follow-Up Notes.** These document each and every step taken by the investigator. Every phone call, site visit, request for records, letter sent, and conversations with people who may offer background information, e.g., confirming the business hours of a restaurant, are documented here.
- **Investigator's Case Summary.** In this section the investigator lists and cites to all pieces of evidence that either support or do not support each allegation. The investigator does not draw conclusions based on the evidence.
- **Recommended Disposition Memo.** The OPA-IS commander prepares a memorandum assessing the evidence and recommending findings as to each named employee and each allegation.
- **Chain of Command Recommendations.** This record documents whether the named employee's commander agrees with the recommended finding of the OPA-IS commander, and if not, what finding he or she recommends.



Against this backdrop, the Director assesses issues of both procedural and substantive fairness. For officers, most procedural issues are governed by the terms of the collective bargaining agreement. The terms cover concepts fundamental to due process for public employees such as notice of the allegations against the officer, an opportunity to be heard, and timeliness. OPA-IS has an excellent record of adherence to the contract terms.

Beyond the specific rights guaranteed by contract, though, OPA does consider more general issues of fairness. Was the employee given an adequate chance to explain his or her actions and intent? Was the employee questioned courteously and respectfully? Was there a search for exculpatory evidence? Even if an exception to notification or investigation timelines arguably applies, is relying on it the right thing to do?

Complainants are typically not represented, do not have a sophisticated understanding of the complaint process, and do not have specific rights guaranteed by contract. Thus, the OPA is vigilant in ensuring that a measure of procedural fairness inheres in the process. Were the complainants given sufficient information about the process? Were they questioned courteously and with respect? Were they given an opportunity to explain discrepancies? Were they notified of the impact that failure to participate might have on the outcome? Were they reassured against the possibility of retaliation? OPA-IS procedures provide a solid foundation for fairness, and OPA-IS staff demonstrates repeatedly the value placed on fair treatment for complainants.

Thoroughness is the easiest standard to evaluate, and a standard consistently met or exceeded by OPA-IS. Were all documents gathered and all witnesses interviewed? Did the interviews elicit responses to all relevant issues? Were discrepancies pursued? Were reasonable steps taken to identify employees or witnesses whose names were not known? As noted in previous reports, OPA-IS files reflect a very professional and sophisticated approach to investigation and documentation.

Objectivity can be more challenging to assess. The OPA is watchful for signs that credibility determinations were made too early, or upon too little evidence; that minor or irrelevant discrepancies of complainants are emphasized but those of officers ignored; for over-reliance on reports authored by the police; and for stereotypical assumptions made about certain types of complainants with certain kinds of complaints. No system, and no investigator or reviewer, is immune to the possibility that the biases and prejudices each of us holds will affect our analysis or conclusions. Open acknowledgment, discussion and critical examination of the possibility of bias are the only defense against it.

Review of an investigation is not conducted by checking items off a list. In analyzing and weighing evidence against the standards, both the amount and quality of the evidence are considered. In that review, there is room for consideration of the candor, credibility and motivation of the complainant, the named employee, and any witnesses.

There is also a place for reasonable inferences based on experience, and for the application of common sense. The weight of conflicting evidence can be tipped by an assessment of what makes sense, what plausibly seems to have occurred.

Finally, there is room for both healthy skepticism and the benefit of the doubt in the judgment of an incident that no doubt was experienced very differently by the primary actors. Things happen very quickly. Expectations differ. Emotions run high. Both perception and memory are flawed. It cannot be presumed that in a citizen complaint, one person is telling the truth and the other is lying. Far more frequently, the “truth” lies somewhere in the— often messy— middle.

Investigations can be a little bit messy, too. Sometimes, competing considerations must be balanced against each other. For example, the OPA may find at the conclusion of an unnecessary force investigation that a secondary allegation of, say, an improper search, was not thoroughly explored. The relevant witness has already demonstrated poor credibility, and there is little likelihood that the second allegation can be proven. The OPA may certify the completion and findings to meet timelines on the primary issue, leaving the loose end untied.

Every completed investigation receives a thorough investigation and review. Additional efforts and scrutiny are expended on complaints involving serious allegations, complaints with sustained or not-sustained recommendations, and those against employees with similar prior complaints.

While no investigation or review is perfect, Seattle’s citizens are well served by the stringent OPA process.

